

DATE: JANUARY 31, 2023

FROM: ENVIRONMENTAL MANAGEMENT

SUBJECT: RESOLUTION NO. _____ - APPROVAL OF THE THIRD AMENDMENT TO SUBRECIPIENT AGREEMENT NO. 17-3533 WITH EVERPORT TERMINAL SERVICES INC., BYD MOTORS LLC, AND TAYLOR MACHINE WORKS, INC.

SUMMARY:

Staff requests approval of the proposed Third Amendment to Subrecipient Agreement No. 17-3533 between the City of Los Angeles Harbor Department (Harbor Department), Everport Terminal Services, Inc. (Everport), BYD Motors LLC (BYD), and Taylor Machine Works, Inc. (Taylor) to develop and demonstrate five pieces of zero-emissions (ZE) cargo handling equipment for the Port of Los Angeles' Everport Advanced Cargo Handling Demonstration Project (Project). The proposed Amendment will modify the project schedule, extend the term of the Agreement to October 31, 2023, and add certain terms and conditions to align with proposed changes to the associated California Energy Commission (CEC) Grant Agreement. The Fourth Amendment to CEC Grant Agreement No. 17-3532 will be considered by the Board of Harbor Commissioners (Board) under a separate board item. Project costs and participant commitments remain the same. The Harbor Department has met its cost share responsibility under the grant by completing the electrical infrastructure development at Berth 226-236 in March 2022.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Find that the Director of Environmental Management has determined that the proposed action is administratively and categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) and Article III Class 6(2) of the Los Angeles City CEQA Guidelines;
2. Approve the Third Amendment to Subrecipient Agreement No. 17-3533 between City of Los Angeles Harbor Department, Everport Terminal Services Inc., BYD Motors LLC, and Taylor Machine Works, Inc.;

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3. Authorize the Board Secretary to transmit said Amendment to the Los Angeles City Council for approval in accordance with Charter Section 373 and Los Angeles Administrative Code Section 10.5(a);
4. Upon the approval of City Council in accordance with Los Angeles Administrative Code Section 10.5(a), authorize the Executive Director to execute and the Board Secretary to attest to said Amendment for and on behalf of the Board; and
5. Adopt Resolution No. _____.

DISCUSSION:

Background – On November 29, 2016, the CEC released a grant solicitation to implement and administer Sustainable Freight Transportation Projects (GFO-16-604). Nearly \$27,000,000 was made available statewide for all California seaports, marine terminal operators at California seaports, local air districts, and seaport tenants under the solicitation. The Harbor Department submitted a grant application to the CEC on behalf of Everport on January 26, 2017. On February 22, 2017, the CEC notified the Harbor Department that the application was selected and received a preliminary grant award offer in the amount of \$4,524,000. On May 10, 2017, CEC Commissioners approved the funding of the Project and instructed their staff to enter into agreement negotiations with the Harbor Department. In October 2017, the Harbor Department approved Grant Agreement No. 17-3532 with the CEC and Subrecipient Agreement No. 17-3533 with Everport, BYD, and Taylor. Grant Agreement No. 17-3532 was amended and approved by the Board of Harbor Commissioners (Board) on December 3, 2020, and February 24, 2022. The Fourth Amendment to Grant Agreement No. 17-3532 will be considered by the Board under a separate Board item. The Subrecipient Agreement between the Harbor Department, BYD, Everport, and Taylor includes the same terms and conditions detailed in the CEC Grant Agreement.

Port of Los Angeles' Everport Advanced Cargo Handling Demonstration Project – The Project, which began in October 2017, consists of the development and demonstration of three zero-emissions (ZE) battery-electric BYD yard tractors and two ZE battery-electric Taylor top handlers and associated charging infrastructure. The yard tractors are charged with an Electric Truck Smart Plug-In System utilizing a connection arm to receive its charge, and the top handlers are charged utilizing a conventional system. The development of the yard tractors and smart charging system were delayed due to the COVID-19 pandemic as factory shutdowns and stay-at-home orders affected the project team internationally and within the United States in addition to supply chain disruptions extending lead times for materials. The yard tractors and smart charging system began demonstration in the first quarter of 2022; however, due to data collection issues and yard

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tractor repairs, the CEC officially recognized the start of the 12-month demonstration period to be May 17, 2022. With a 12-month demonstration required by the CEC, a project schedule change and term extension are necessary.

The ZE battery-electric Taylor top handlers were delivered at the end of 2019 and put into operation in April 2020. The Project demonstration period for those units was completed in April 2021 and Everport continues to use the equipment.

Grant Match Funding Status - Taylor manufactured the ZE top handlers and provided in-kind match funding in the amount of \$121,500. BYD manufactured the ZE yard tractors and provided in-kind match funding in the amount of \$189,634. Everport provided match funds in the amount of \$856,000 for labor to operate and maintain the cargo handling equipment. Under the grant, the Harbor Department was financially responsible for \$2,000,000 for the design and construction of the electrical infrastructure to support this Project at the Everport terminal. This construction was completed in March 2022. The total project cost inclusive of the grant funds and partner costs is \$7,691,134.

Subrecipient Agreement First Amendment – The First Amendment to the Subrecipient Agreement between the Harbor Department, BYD, Everport, and Taylor to demonstrate the ZE top handlers and ZE yard tractors included modifications to the Project to align with changes in the CEC Grant Agreement amendment and extended the term from November 14, 2020 to March 31, 2022.

Subrecipient Agreement Second Amendment – The Second Amendment to the Subrecipient Agreement included the same modifications as detailed in the Third Amendment to the CEC Grant Agreement, including updates to the schedule and term extension from March 31, 2022 to March 31, 2023. The Amendment also addressed an assignment of the Agreement from BYD Motors Inc. to BYD Motors LLC due to a change in entity status. The Second Amendment was effective as of April 1, 2022.

Subrecipient Agreement Third Amendment – The proposed Third Amendment to the Subrecipient Agreement (Transmittal 1) includes the same modifications as detailed in the Fourth Amendment to the CEC Grant Agreement, including updates to the schedule (Transmittal 2), term extension from March 31, 2023, to October 31, 2023, and the addition of Exhibit C-1, Special Terms and Conditions (Transmittal 3), to align with the associated Project Grant Agreement. The special terms and conditions require the completion of all tasks described in the scope of work by the end of the new term, the submission of the final report by August 31, 2023, and acceptance of new contract language regarding grant reimbursement deadlines and payment of liquidated damages. The reimbursement deadline clause in Exhibit C-1 requests that all invoices for reimbursement be submitted by March 31, 2023, prior to the funding liquidation deadline

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of June 30, 2023. As a result, the CEC will pay all Agreement funds, including release of retention, before all Project work is scheduled to be complete. Typically, the CEC withholds some or all retention until the end of the Agreement to help ensure grantees fully perform. The liquidated damages clause in Exhibit C-1 states that damages may result from the CEC distributing funds prior to all reports being submitted by the Harbor Department. If any remaining tasks are not completed by the end of the Agreement term, the Harbor Department may be required to reimburse the CEC \$452,400, which is ten percent of the total Agreement funds disbursed as of the end date of the Agreement or \$452,400. The remaining tasks include completion of the 12-month demonstration, submission of the final report, and convening of a final meeting. Since the Harbor Department is responsible for preparing and submitting the final report to the CEC by August 31, 2023, as well as convening the final meeting by October 31, 2023, the liquidated damages provision outlined in Exhibit C-1, will not be passed through to the subrecipients. As a result, there is a risk to the Harbor Department for payment of the liquidated damages, but staff believes it is minimal. Staff is working very closely with the CEC grant manager to ensure all tasks are completed in accordance with the new schedule.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of the Third Amendment to Subrecipient Agreement No. 17-3533 to fund a demonstration project to develop and demonstrate five pieces of zero-emission cargo handling equipment, which is an administrative activity involving basic data collection, field testing, and research of City Departments which do not result in serious or major disturbances to an environmental resource. The approval of the Third Amendment is considered an administrative activity, and the demonstration project involves data collection, field testing and research, which would not result in a serious or major disturbance to an environmental resource.

Therefore, the Director of Environmental Management has determined that the proposed action is administratively and categorically exempt from the requirements of CEQA in accordance with Article II Section 2(f) and Article III Class 6(2) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the proposed Third Amendment to Agreement No. 17-3533 extends the terms of the Subrecipient Agreement to October 31, 2023, as well as replaces the current "Schedule of Products and Due Dates" with a modified version and adds the "Special Terms and Conditions" to be a part of the Agreement.

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The Harbor Department applied for the grant on behalf of Everport. The Harbor Department functions as the grant administrator and passes the funds to BYD and Taylor upon milestone completion. No funds will be passed to Everport. Additionally, Everport pays for the electricity costs associated with charging the ZE equipment.

Under the grant, the Harbor Department's Cost Share responsibility is \$2,000,000 for the development of electrical infrastructure. This was budgeted in Capital Improvement Program Work Order 25453 – B. 226-236 Advanced Cargo Handling Demonstration. The development of the electrical infrastructure was completed on March 30, 2022, at a Total Project Cost of \$2,950,000.

The table below summarizes the costs and funds for the overall Project.

Project Partner	Vehicle Type	# Units	CEC Funds	Cost Share	TOTAL
BYD	Yard Tractor	3	\$870,000	\$189,634	\$1,059,634
Taylor	Top Handler	2	\$3,654,000	\$121,500	\$3,775,500
Everport			0	\$856,000	\$856,000
Harbor Department			0	*\$2,000,000	\$2,000,000
TOTAL			\$4,524,000	\$3,167,134	\$7,691,134

* The Harbor Department's Cost Share under the grant agreement was \$2,000,000 to develop electrical infrastructure; however, the total development cost for this activity was ultimately \$2,950,000, an increase of \$950,000 relative to the grant cost share requirement.

To date, the total grant funding received by the CEC is \$4,437,000. The remaining balance of \$87,000 will be requested by March 31, 2023, in accordance with the Terms and Conditions in order to meet the CEC's liquidation deadline of June 30, 2023. All of the final tasks associated with this project must be complete by October 31, 2023 or the CEC may require repayment of 10 percent of the grant from POLA. The risk of this is low because the Harbor Department staff is coordinating very closely with the CEC to submit all reports by the updated deadlines.

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved as to form and legality the Third Amendment to Subrecipient Agreement No. 17-3533.

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TRANSMITTALS:

1. Third Amendment to Subrecipient Agreement No. 17-3533 with Everport Terminal Services Inc., BYD Motors LLC, and Taylor Machine Works, Inc.
2. Exhibit A Attachment A-1 "Schedule of Products and Due Dates"
3. Exhibit C-1 "Special Terms and Conditions ARV-16-024 Amendment 4"

FIS Approval: MB
CA Approval: SO



CHRISTOPHER CANNON
Director of Environmental Management

Michael DiBernardo

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Deputy Executive Director

APPROVED:

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CC/yo
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FILE: Y:\ADMIN\BOARD REPORTS\AIR QUALITY\GRANTS\CEC - SUST FREIGHT TRANS PROJECTS 2016 GRANT (Taylor and BYD)\2022 SUBRECIPIENT THIRD AMENDMENT\Environmental_CEC Subrecipient Amendment 3_Board Report - FINAL.docx
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